Supreme Court, U.S.
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No. 08131

IN THE

Supreme Court of the United States

BONITA G. HILLIARD, in her capacity as Trustee
Of The H. David and Bonita G. Hilliard Living Trust,
Petitioner,

v.

TIMOTHY E. JACOBS,
Respondent.

On Petition For A Writ Of Certiorari
To The Court of Appeals

APPENDIX

Bonita G. Hilliard, Trustee
The H. David and Bonita G. Hilliard LT
4575 East Heritage Woods Road
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Pro Se Petitioner

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APPENDIX A

Federal Issues Arising From The State Court's Decision, Pursuant to Supreme Court Rule 14(1)(i)

The holdings of this Court, Indiana's past precedents, other State courts of last resort and jurisdictions were each raised uncountable times in the motions and briefs in the trial court and appellant courts, as were holdings against wagering on another person's life, the insurable interest doctrine, centuries of common law and public policy condemning and prohibiting wagering on another person's life, insurable interest, consent of the insured, the dispositive mandatory authority of Indiana Code §27-8-1-6, in the maintenance of life insurance at any point in time, constitutional rights and due process.

With respect to citing the manner, when and how each where raised, given the uncountable times the wagering and insurable interest were raised, a sampling of the following excerpts on each issue in the trial court, Indiana Court of Appeals and the Indiana Supreme Court are provided, beginning with the latter:

A. Indiana Supreme Court, Petition to Transfer, page 2:

"The Court of Appeals reversed the trial court by concluding the Purchase Agreement, itself, did not terminate the Policies, and remanded the case for further proceedings. The lower court, unfortunately, based its decision on two misconceptions of fact. The

first misconception was that David sold his Units to Jacobs and departed from AMT. Instead, David did not depart from AMT, and was paid for his Units from the Sale proceeds by Author Solutions (App. pp. 337-340), when the Parties respectively consummated the Sale on October 16, 2002. *Ibid* The Court of Appeals' second misconception, arising from the first, was that Section 6 of the Purchase Agreement was applicable to the Sale, which required either a Member's Units be sold pursuant to the Operating Agreement or due to death. App. p. 253. Instead, Section 6 was inapplicable by the Parties being paid for their Units from the Sale proceeds and dissolving AMT pursuant to the Letter Agreement (App. p. 291, No. 12), which terminated the Purchase Agreement. App. p. 253, Section 9(B)). This Court denied transfer three to two."

B: <u>Indiana Supreme Court</u>, Petition to Transfer, pages 5 and 6, respectively:

"The Supreme Court of the United States twice qualified in *Schaefer* that an absolute rule was *not* being established to the effect that any insurance policy, valid at inception by an insurable interest existing, must remain valid at all times thereafter, by holding "[t]he essential thing is, that the policy shall be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which the insured has no interest," *Id.* at 460, and "[o]f course, a colorable or merely temporary interest would present circumstances from which want of good faith and an intent to evade the rule [the prohibition against wagering on another's life] might be inferred." *Id.* at 461."

"The fact situations of *Schaefer* and *Farra, supra,* are altogether dissimilar to the case at bar, and the very circumstances that the Supreme Court of the United States held invalidate a life insurance policy unequivocally exist here. As is evident, the "general rule," described in *Farra* is limited in its intended scope to cases involving a *'deceased'* insured who *'may'* have failed to perfect a change of beneficiary for a policy that the insured consented to continuing in force and named a beneficiary the insured specifically chose to be paid the proceeds. It is apparent that such a rule was never meant to have universal applicability, and most certainly not to be considered pertinent in cases where a *'living'* insured adamantly does not consent to the policy's continuance or when the insured's estate is contractually mandated the policy's beneficiary, the contractual insurable interest had ceased, and the party, who was contractually mandated to pay the insured's estate the proceeds, admits to withholding the policy from the insured to prosper financially."

C: Indiana Supreme Court, Reply Brief in Support of Transfer, page 4:

"With due respect, the transcending Constitutional violations from a ruling that would dismiss a person's right to control who maintains an insurance policy on his or her *'own'* life, and disregards laws protecting such inherent right, critically necessitates this Court's intervention."

D: Indiana Supreme Court, Petition to Transfer Motion For Oral Argument, page 3:

"For the aforestated reasons, David's Estate respectfully requests oral argument be granted in

this cause, as reasoned debate will better assist this Court's just consideration of the dispositive authority of I.C. § 27-8-1-6, the applicable Indiana precedents, the constitutional rights of an insured, and the material issues of fact in their true context."

E. **Indiana Supreme Court**, Motion to Strike, pages 11 and 12, respectively:

"As a direct result of the misrepresentation herein evidenced, and the repeated material issues of fact misrepresentations during the course of same, the impartial functions of the lower court in the current and 2004 interlocutory appeals, and of this Court in the 2004 interlocutory appeal, have been corrupted, the administration of justice has been prejudiced, and a material prejudice to David's lawsuit twice resulted in the loss of his legal and valuable property rights to have the Policies rightfully terminated or transferred to his Estate, and invalidated in this appeal pursuant to the mandatory dispositive authority, in and of itself, of I.C. § 27-8-1-6."

"Pursuant to Trial Rule 60(B)(3), a "Relief from judgment or order" is granted as a result of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party."

"RELIEF REQUESTED

To remedy, in part, the misrepresentations herein evidenced, and prevent irreparable harm from same, David's Estate respectfully requests this Court to strike the *Amicus Curiae* appearance and *Amicus* Brief, vacate the lower court's November 18, 2007,

published opinion, and grant David's Estate transfer upon same. The Court is further respectfully requested to grant oral argument in this cause, to justly afford David's Estate procedural due process in correcting Jacobs' misrepresentations of material issues of facts in this appeal, since these same misrepresentations were made by Jacobs in the 2004 interlocutory appeal and cited in the Court of Appeals' June 23, 2005, published opinion as reasons for its decision to reverse the April 14, 2004, grant of summary judgment to David by the Honorable David K. Johnson, a thirty-year veteran of the bench. *See* Petition To Transfer, at p. 2, ¶ 2 and footnote."

F. Indiana Court of Appeals, Brief Of Appellant, page 16:

"Indiana's position is consistent with that of federal authorities and those of virtually every other state:

> "The rule adopted by the courts of England and of the United States generally, and by the Supreme Court of this state, is that the assured must have an insurable interest in the life of the person insured." *Nye, supra,* 36 N.E.2d at 433."

"All of these cases hold that for there to be a valid policy of insurance, there must be an insurable interest in the life of the insured as:

> [o]therwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject,

condemned, as being against public policy." *Warnock v. Davis,* 104 U.S. 775,

This universally accepted rule and all of the many decisions which have firmly established its precepts to the point of incontestability are grounded upon considerations of strong public policy:

> "A contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter interest in having the life come to an end. And although that counter interest always exists...the chance that in some cases it may prove a sufficient motive for crime is greatly enhanced if the whole world of the unscrupulous are free to bet on what life they choose. The very meaning of an insurable interest is an interest in having the life continue, and so one that is opposed to crime. And what, perhaps, is more important, the existence of such an interest makes a roughly selected class of persons who, by their general relations with the person whose life is insured, are less likely than criminals at large to attempt to compass his death. *Grigsby v. Russell*, 222 U.S. 149, 154 (1911)."

G. <u>Trial Court</u>, Plaintiff's Brief In Opposition of Defendant's Motion For Summary Judgment And In Support Of Plaintiff's Motion For Summary Judgment, pages 9 and 10, respectively:

"If the law allowed for individuals to take out life insurance policies on individuals in which they have no insurable interest, then the holder of the policy becomes interested in the death, rather than the life

of the party insured. The law is clearly "opposed to such speculations in human life." *Kessler v. Kuhns*, 27 N.E. 980 (Ind. 1891)." "As the Supreme Court Stated:

> It was said that the assignment of a policy of life insurance to one having no expectation of benefit or advantage from the continuance of the life of the insured, founded on relations of blood, marriage, or pecuniary interest to one who is interested in his death, rather than his life, is obnoxious to all objections which exist to the issue of the policy originally to such persons. *Id.* at 981."

APPENDIX B
2004 Trial Court Ruling

STATE OF INDIANA	)	IN THE GREENE CO.
	)SS:	CIRCUIT COURT
COUNTY OF GREENE	)	CAUSE NO.
		28C01-0303-CC-00090
H. DAVID HILLIARD	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TIMOTHY E. JACOBS	)	
	)	
Defendant.	)	

SUMMARY JUDGMENT ENTRY

This matter having come before the Court upon the motion of plaintiff, H. David Hilliard, for an entry of partial summary judgment upon Count II of his Second Amended Complaint, and upon the motion of defendant, Timothy E. Jacobs, for an entry of summary judgment upon the entirety of plaintiff's Second Amended Complaint, and the Court having reviewed said motions, heard argument on same, and being duly and fully advised in the premises, hereby grants in part and denies in part plaintiff's Motion for Partial Summary Judgment and denies in its entirety defendant's Motion for Summary Judgment.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff's Motion for Partial Summary Judgment is granted as to the insurance policies held by defendant, Timothy E. Jacobs, upon

the life of plaintiff, H. David Hilliard, and denied with respect to the policy of insurance held jointly by plaintiff, H. David Hilliard, and defendant, Timothy E. Jacobs, on the life of Robert McCormack. Accordingly, it is ORDERED, ADJUDGED AND DECREED that defendant, Timothy E. Jacobs, is ordered to terminate the following policies of insurance he currently maintains on the life of H. David Hilliard: Policy No. L01404652, issued by AIG Life Insurance Company, and Policy No. Z00800484, issued by West Coast Life Insurance Company, and to provide the Court with verification of this termination within twenty (20) days of the date of this Order.

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's request for an entry of summary judgment with respect to the life insurance policy held jointly by plaintiff, H. David Hilliard, and defendant, Timothy E. Jacobs, on the life of Robert McCormack, be, and hereby is, denied.

WHEREFORE, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant's Motion for Summary Judgment be, and hereby is, denied in its entirety.

Dated: April 14, 2004

Signature On File

Judge Greene Circuit Court

APPENDIX C
FOR PUBLICATION
Court of Appeals Opinion, June 23, 2005

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IN THE COURT OF APPEALS OF INDIANA
No. 28A01-0404-CV-187

TIMOTHY E. JACOBS,
Appellant-Respondent,
vs.
BONITA G. HILLIARD, in her
capacity as Trustee of the H. David
and Bonita G. Hilliard Living Trust,
Appellee-Plaintiff.

APPEAL FROM THE GREENE
COUNTY CIRCUIT COURT
The Honorable David K. Johnson, Judge
Cause No. 28C01-0303-CC-90

June 23, 2005
OPINION – FOR PUBLICATION
KIRSCH, Chief Judge

Timothy E. Jacobs appeals the trial court's entry of partial summary judgment in favor of H. David Hilliard, 1 which required Jacobs to terminate the life insurance policies Jacobs then held on Hilliard's life. The dispositive issue is whether the trial court erred in requiring Jacobs to terminate the life insurance policies he held on Hilliard's life after the parties had dissolved their joint business.
We reverse and remand. 2

FACTS AND PROCEDURAL HISTORY3

Hilliard and Jacobs entered into business together in early 1997, when Hilliard agreed to contribute capital to Jacobs's company, Advance Marketing Technology, LLC ("AMT"). Jacobs and Hilliard each held a 50% ownership interest in AMT and were its only two members. As the company prospered, Jacobs and Hilliard decided to address the possibility of the unexpected death or disability of one of them. On September 17, 1999, they executed a cross purchase agreement, which required Jacobs and Hilliard to insure each other's lives in the amount of $200,000. Under the terms of the agreement, the insurance proceeds were to fund the buy out of the deceased's widow's or disabled member's shares.

[1] H. David Hilliard has passed away since the trial court's entry of judgment. Hilliard's wife has requested that the appeal be recaptioned with H. David's name replaced by Bonita G. Hilliard, in her capacity as Trustee of the H. David and Bonita G. Hilliard Living Trust.

2 We hereby deny the Appellee's Motion for Leave to File Sur Reply Brief and the Appellee's Motion to Strike Portions of the Reply Brief of Appellant. We grant the Appellant's Motion for Leave to File Second Supplemental Appendix to Reply Brief of Appellant.

[3] We held oral argument on this case on April 26, 2005. We commend counsel on the quality of their oral and written advocacy.

As AMT became even more successful, Jacobs and Hilliard executed a subsequent cross purchase agreement (the "Cross Purchase Agreement") on April 23, 2001, which increased the amount of life insurance each partner carried on the other to two million dollars. Jacobs and Hilliard each obtained the additional policies and were both the owners and beneficiaries of those policies. AMT paid the premiums on these policies until the business was sold in 2002. Jacobs and Hilliard sold the business to Author Solutions, Inc., and executed a redemption and settlement agreement (the "Settlement Agreement") to resolve all outstanding claims and demands between the two. AMT was officially dissolved on November 15, 2002.

After dissolution, Hilliard proposed that he and Jacobs swap the life insurance policies they held on each other's lives. Jacobs declined the offer and

continued to pay the premiums on the policies he held on Hillard's life. Hilliard stopped paying the premiums on the policies he held on Jacobs's life.

On January 13, 2003, Hilliard filed a Complaint for Declaratory Judgment and Conversion Damages in which he requested that the trial court either order Jacobs to convey the life insurance policies to him or cancel the life insurance policies Jacobs held on his life. On April 14, 2004, the trial court granted Hilliard's motion for partial summary judgment and ordered that Jacobs terminate the life insurance policies on Hilliard's life.

Jacobs filed an interlocutory appeal on April 26, 2004, and also moved to stay enforcement of the trial court's order that he terminate the policies. The trial court granted Jacobs's motion for a stay, and Hilliard objected. Hilliard requested that the trial court order Jacobs to change the beneficiary on the policies to the Clerk of the Greene County Circuit and Superior Courts (the "Clerk") and to physically transfer the policies to the Clerk. The trial court granted this request and ordered Jacobs to change the beneficiary on the policies and to deliver the policies to the court on June 21, 2004. Jacobs delivered the policies to the court on July 6, 2004. Hilliard passed away from ventricular fibrillation on July 22, 2004.

DISCUSSION AND DECISION

On appeal, the standard of review for a summary judgment motion is the same as that used in the trial court: summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law. Ind. Trial Rule 56(C); *Amerisure, Inc. v. Wurster Constr. Co., Inc.*, 818 N.E.2d 998, 1001 (Ind. Ct. App. 2004). The moving party bears the burden of designating sufficient evidence to eliminate any genuine factual issues, and once the moving party has fulfilled this requirement, the burden shifts to the nonmoving party to come forth with contrary evidence. *Amerisure, Inc.*, 818 N.E.2d at 1001. All facts and reasonable inferences drawn from those facts are construed in favor of the nonmoving party. *Id.*

Jacobs argues that the trial court erred in ordering him to terminate the life insurance policy he held on Hilliard's life because the language of the Cross Purchase Agreement does not dictate that the life insurance policies be terminated upon dissolution of the business. Sections 5 and 6 of the Cross Purchase Agreement specifically relate to the policies.

Section 5. Life Insurance. Each of the Members has obtained a policy of life insurance on the life of the other Member in the face amount of Two Million Dollars ($2,000,000.00). Each of the Members shall maintain such life insurance in force throughout the duration of this agreement. Each policy is now and shall continue to be payable to the Member who owns and pays for such policy. At any time, but no more frequently than monthly, a Member may require the other Member to provide written evidence that the insurance policy owned and paid for by such other Member remains in force and that all premiums due thereon have been fully paid. If a Member shall fail to pay a premium when due the other Member may pay the premium on the policy insuring his life in order to keep such policy in force and thereafter

collect the full amount of such premium, together with an administrative fee of ten percent (10%) of the premium paid from the Member who failed to make timely payment thereof. The life insurance policies described above, together with any additional policy or policies obtained by the members in support of their respective obligations under this agreement shall be listed on the attached schedule A.

Section 6. Disposition of Policies. In the event that a Member should sell his units during his lifetime under the terms of AMT's Operating Agreement, or in the event of the death of a Member, the surviving or remaining Member shall have the option, exercisable within twenty (20) days of the date of such event, to purchase any life insurance policies on his life owned by the selling or deceased Member subject to this agreement. A Member shall give written notice of his intention to buy such policies to the other Member or to the personal representative of the deceased Member. The purchase price for any such policy shall be the cash value of such policy as of the date of purchase or One Hundred Dollars, whichever is greater. If the foregoing option is not exercised within said 20-day period, AMT shall have a similar option for an additional ten (10) day period. If neither the Member nor AMT exercises its option, the policy shall no longer be subject to this agreement.

Appellant's Appendix at 105-06.

When interpreting a written contract, our goal is to determine the intent of the parties at the time of execution as revealed by the language they chose in expressing their rights and responsibilities. *Evans v. Med. and Prof'l Collection Serv., Inc.*, 741 N.E.2d

795, 797 (Ind. Ct. App. 2001). Only when the meaning of a contract cannot be gleaned from the four corners of the instrument does the intention of the parties become a question of fact and resort to extrinsic evidence proper. *Id.* at 797-98. The test for determining if a contract is ambiguous is whether reasonable persons would find the agreement subject to more than one interpretation. *Id.* at 798.

Here, a close reading of the Cross Purchase Agreement reveals that it is not ambiguous. Hilliard sold his shares of AMT to Jacobs in anticipation of a sale of the business on October 14, 2002, pursuant to the Settlement Agreement signed by both parties. From the language in Section 6 above, when a member sells his units, the remaining member has the option to purchase the policy held on his own life within twenty days from the sale. Therefore, the only right triggered by Hilliard's sale was that Jacobs had the right to purchase the policy Hilliard held on his life before November 3, 2002 (20 days after the sale), and then AMT had the option of purchasing the policy on Jacobs's life before November 13, 2002 (10 days after Jacobs's right expired). Neither option was exercised leaving the policies as "no longer . . . subject to this agreement." *Id.* at 106. Once the policies were "no longer ... subject to this agreement," it appears from the language of the Cross Purchase Agreement that the policies were merely no longer required to be maintained. We do not read this language as mandating that Jacobs should be required to terminate his life insurance policy held on Hilliard.

Hilliard maintains that the trial court was within its equitable powers when it ordered Jacobs to

terminate his policy on Hilliard's life. We addressed similar facts in *Shriner v. Sheehan*, 773 N.E.2d 833 (Ind. Ct. App. 2002). In *Shriner*, an employee and minority shareholder of an encyclopedia sales company was terminated. Prior to his termination, the company had purchased a life insurance policy worth five million dollars on the life of his partner, Sheehan, and had placed the policy in Shriner's name. The purpose of the policy was to fund the cross purchase agreement between the parties that covered the purchase of shares from a terminated shareholder. Upon Shriner's termination, the company ceased paying the premiums on the insurance policy on Sheehan's life. Shriner paid the premiums on the policy himself until the trial court ordered him to give up the policy, while granting him its cash surrender value. We upheld the trial court's ability to craft this remedy in equity stating, "While recognizing that the original purpose for the purchasing of the policy was frustrated, the trial court's remedy also honored Shriner's property interest in the policy by allowing him to keep the entire cash surrender value[, which] . . . did not contradict any clear agreement between the parties." *Shriner*, 773 N.E.2d at 850.

Our case is to be distinguished. Unlike the agreement in *Shriner*, which did not specify what would happen to the policy if Shriner were involuntarily terminated, and therefore, was more appropriately addressed in equity, here, the Cross Purchase Agreement does set forth steps that may be taken when one member sells his shares of the company. Such a sale triggers certain rights for the remaining member with respect to the life insurance policy held by the selling member, but no similar

rights for the selling member. Further, Jacobs's policy is a term life insurance policy with no cash surrender value, unlike the policy in *Shriner* that was a whole life policy with a surrender value. By requiring Jacobs to terminate his policy, we would be unable to honor Jacobs's property interest in the policy by granting Jacobs the right to compensation for surrendering the policy. Therefore, we conclude that the trial court erred in requiring Jacobs terminate his life insurance policy on Hilliard.

Reversed and remanded.
SULLIVAN, J., and VAIDIK, J., concur.

APPENDIX D
2007 Trial Court Ruling

STATE OF INDIANA	)	IN THE GREENE
	)SS:	CIRCUIT COURT
COUNTY OF GREENE	)	CAUSE NO.
		28C01-0303-CC-90
BONITA G. HILLIARD,	)	
in her capacity as Trustee	)	
of The H. David and	)	
Bonita G. Hilliard Living	)	
Trust,	)	
Plaintiff,	)	
vs.	)	
	)	
TIMOTHY E. JACOBS,	)	
Defendant.	)	
	)	
	)	
WEST COAST LIFE INS.	)	
COMPANY, and	)	
AMERICAN GENERAL	)	
LIFE INS. COMPANY	)	
Intervening Plaintiffs,	)	
vs.	)	
BONITA G. HILLIARD,	)	
in her capacity as Trustee	)	
of The H. David and	)	
Bonita G. Hilliard Living	)	
Trust, and	)	
TIMOTHY E. JACOBS	)	
Intervening Defendants.	)	

CONCLUSION OF LAW

The Defendant Timothy E. Jacobs Defendant, having filed a Motion for Summary Judgment on

Plaintiff's Second Amended Complaint on June 1, 2006, and the Plaintiff Bonita G. Hilliard, in her capacity as the Trustee of The H. David and Bonita G. Hilliard Living Trust. Plaintiff, having filed her Motion for Summary Judgment on October 3, 2006, and the Court having considered the evidence designated by the parties, reviewed the briefs of the parties, and heard argument of counsel, now finds and orders as follows:

Commencing in 1997, H. David Hilliard ("Hilliard") and the Defendant were respectively 50% members and owners of all of the outstanding units of ownership of Advance Marketing Technology, LLC ("AMT").

On or about September 17, 1999, Hilliard and the Defendant executed a Cross Purchase Agreement ("1999 Cross Purchase Agreement") under which terms the Defendant was required to obtain a life insurance policy on the life of Hilliard in the sum of $200,000.00. On or about April 23, 2001, Hilliard and the Defendant executed another Member's Cross Purchase Agreement ("2001 Cross Purchase Agreement") under which terms both Hilliard and the Defendant were required to obtain life insurance policies on the other with the value respectively increased to $2 million. The purpose of the life insurance policies under the 2001 Cross Purchase Agreement was to provide financing for the purchase of a deceased or disabled members shares by the remaining member.

Pursuant to the terms of the 2001 Cross Purchase Agreement, both Hilliard and the Defendant obtained one or more policies on the life of the other with the Defendant obtaining two term life insurance

policies insuring the life of Hilliard totaling $2.5 million, one policy from West Coast Life Insurance Company {"West Coast") and one policy from AIG Life Insurance Company ("AIG") (collectively, "the Policies").

The business relationship between Hilliard and the Defendant, and the pecuniary interest related thereto, created an insurable interest for the Defendant in the life of Hilliard at the time the Policies were obtained. During October and November of 2002, all of AMT's assets were sold to a third party, Hilliard and the Defendant were paid for their respective member units in AMT, and AMT was formally dissolved. Upon the asset sale and dissolution of AMT, the Defendant no longer had an insurable interest in the life of Hilliard.

Following the asset sale and formal dissolution of AMT, Hilliard allowed the life insurance policies he held on the Defendant to lapse and the Defendant continued to pay the premiums and maintain the Policies, ultimately over Hilliard's objection.

Whether a party can maintain a life insurance policy on another person after the insurable interest that gave rise to the policy no longer exists, and when the insured party does not consent to the continuation of the policy.

The standard for the granting of a motion for summary judgment is well settled and established. The Court may grant the motion only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Indiana Trial Rule 56(C).

The Court has thoroughly researched the issue and examined the authority cited by the parties, and it appears there is no clear and on point authority in Indiana. This is consistent with the assertion in footnote 3 in Estate of Powers v. Powers, 849 N.E.2d 1212, footnote 3 (Ind. Ct. App. 2006), which states as follows: "Indiana law is also unclear as to when an insurable interest in the life of another must exist. Some states appear to only require an insurable interest at the inception of the insurance contract, but there is authority holding that cessation of the interest is fatal to the validity of the contract. In re Marriage of Day, 31 Kan. App. 2d 746, 74 P.3d 46, 51 (Kan. Ct. App. 2003)."

Clearly the Kansas Court of Appeals' decision in Day is not binding authority for this Court and, further, the Court does not find it persuasive in this matter. The Day's Court's decision appears to be interpreting a Kansas statute and the State of Indiana does not have a similar statute.

The Plaintiff relies heavily upon Powers and I.C. 27-8-1-6; however, the Court finds these cited authorities to be more relevant to the clearly established law in Indiana that an insurable interest must exist at the time a life insurance policy issued or obtained. I.C. 27-8 contains the language, "A policy or certificate issued by. . ." The use of the term "issued" leads this Court to believe that this particular section applies to life insurance policies at the time they are "issued" ..

In Jacobs v. Hilliard, 829 N.E.2d 629, the Indiana Court of Appeals reversed a previous summary Judgment entry in this case and remanded the case back to this Court. In Jacobs, the Court determined

that the 2001 Cross Purchase Agreement was not ambiguous and that the Policies were merely no longer required to be maintained once AMT's assets were sold and it was formally dissolved. and further found that the 2001 Cross Purchase Agreement did not require the Defendant to terminate the Policies once they were no longer subject to the 2001 Cross Purchase Agreement. Plaintiff's contention that the 2001 Cross Purchase Agreement is controlling and requires the termination or transfer of the Policies has been decided and denied in Jacobs.

The Court is not finding that I.C. 27-1-12-17.1 is controlling authority for the issue at hand, but it does serve as persuasive statutory authority that recognizes the concept that "An insurable interest must exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs." LC. 27-1-12-17.1(e).

The Court finds as a matter of law in Indiana that a party can obtain a life insurance policy on another person so long as an insurable interest or consent of the insured exists at the time the policy for insurance is obtained, and a party can maintain a valid life insurance policy on another person after the insurable interest no longer exists.

The finding of law set forth above protects the public policy against wagering contracts by ensuring that there is an insurable interest or consent of the insured before another party can obtain a valid life insurance policy on another person.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Summary Judgment on Plaintiff's Second Amended

Complaint is hereby GRANTED, and the Plaintiff's Motion for Summary Judgment is hereby DENIED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Greene County Clerk is hereby ordered to return to the Defendant through his attorney(s), the AIG Life Insurance Policy #L01404652 and West Coast Life Insurance Policy #Z00900484, and to relinquish and reassign to the Defendant all rights in respect to these policies in cooperation with the Defendant's attorney(s).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Court's entry of summary judgment resolves all matters that were pending before the Court; therefore, the court trial scheduled for May 7, 2007 at 9:00 a.m. is hereby vacated.

SO ORDERED this 31st day of January, 2007.

Signature On File
Erick C. Allen, Judge
Greene Circuit Court

APPENDIX E

October 18, 2007 Court Of Appeals' Opinion

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IN THE
COURT OF APPEALS OF INDIANA
OPINION

No. 28A05-0702-CV-120 – October 18, 2007

BONITA G. HILLIARD,
in her Capacity as Trustee
of The H. David and Bonita
G. Hilliard Living Trust,
Appellant-Plaintiff,

vs.

TIMOTHY E. JACOBS,
Appellee-Defendant.

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0303-CC-90

October 18, 2007, OPINION - FOR PUBLICATION
BARNES, Judge

CASE SUMMARY

Bonita Hilliard, in her capacity as the trustee of the H. David and Bonita G. Hilliard Living Trust, appeals the trial court's granting of Timothy Jacobs's motion for summary judgment. We affirm.

Issue

Bonita raises one issue, which we restate as whether the trial court properly determined that Jacobs was entitled to summary judgment because he was permitted to maintain the life insurance policies on David after the insurable interest that gave rise to the policies terminated.

Facts

In 1997, Jacobs and David entered into a business arrangement and created Advance Marketing Technology, LLC ("AMT"). Each had a 50% ownership interest in the business, which grew to be successful. In 1999, Jacobs and David executed a cross-purchase agreement in which they each agreed to purchase term life insurance policies on the other in the amount of $200,000 so that in the event of unexpected death of Jacobs or David, the other would be able to buy out the deceased member's shares of AMT. In 2001, they executed another cross-purchase agreement providing for the purchase of $2,000,000 policies on the life of the other.

Both agreements contained the following language:

> Section 6. Disposition of the Policies. In the event that a Member should sell his units during his lifetime under the terms of AMT's Operating Agreement, or in the event of the death of a Member, the surviving or remaining Member shall have the option, exercisable within twenty (20) days of the date of such event, to purchase any life insurance policies on his life owned by the selling or deceased Member subject to this Agreement. A Member shall give written notice of his intention to buy such policies to the other Member or to the personal representative of the deceased Member. The purchase price for any such policy shall be the cash value of such policy as of the date of purchase or One Hundred Dollars, whichever is greater. If the foregoing option is not exercised within said 20-day period, AMT shall have a similar option for an additional ten (10) day period. If neither the Member nor AMT exercises the option, the policy shall no longer be subject to this Agreement.
>
> App. pp. 191, 199.

On October 14, 2002, Jacobs and David entered into a redemption and settlement agreement regarding their interests and the sale of AMT. Eventually, AMT's assets were sold to a third party. AMT was officially dissolved on November 15, 2002. Around the time of the dissolution, David asked Jacobs if he wanted to trade the life insurance policies that they held on the other's life. Jacobs

declined and continued to pay the premiums on the policies he held on David's life.

On January 13, 2003, David filed a complaint, which was subsequently amended to include in part a request for declaratory judgment. David requested that Jacobs convey the life insurance policies to him or that Jacobs cancel the policies. On April 14, 2004, the trial court granted David's motion for partial summary judgment and ordered Jacobs to terminate the life insurance policies he held on David's life.

On April 26, 2004, Jacobs filed an interlocutory appeal. On July 22, 2004, while the appeal was pending, David died from ventricular fibrillation.1 On appeal, Jacobs argued that the trial court improperly ordered him to terminate the life insurance policies because the cross-purchase agreement did not dictate termination of the policies. We concluded:

> Hilliard sold his shares of AMT to Jacobs in anticipation of a sale of the business on October 14, 2002, pursuant to the Settlement Agreement signed by both parties. From the language in Section 6 above, when a member sells his units, the remaining member has the option to purchase the policy held on his own life within twenty days from the sale. Therefore, the only right triggered by Hilliard's sale was that Jacobs had the right to purchase the policy Hilliard held on his life before November 3, 2002 (20 days after the sale), and then AMT had the option of purchasing the policy on Jacobs's life before November 13, 2002 (10 days after Jacobs's right expired). Neither option was exercised

> leaving the policies as "no longer . . . subject to this agreement." [App. pp. 191, 199]. Once the policies were "no longer . . . subject to this agreement," it appears from the language of the Cross Purchase Agreement that the policies were merely no longer required to be maintained. We do not read this language as mandating that Jacobs should be required to terminate his life insurance policy held on Hilliard.

Jacobs v. Hilliard, 829 N.E.2d 629, 633 (Ind. Ct. App. 2005), trans. denied. We also concluded that equity did not require the termination of the policy. Id. at 633-34. Accordingly, we reversed and remanded. Id. at 634.

1 On October 21, 2004, the trial court substituted Bonita, as trustee, for David, as the plaintiff.

2 For the sake of this appeal, we assume that Bonita is the proper party to challenge the validity of the insurance policies. See Secor v. Pioneer Foundry Co., 173 N.W.2d 780, 782 (Mich. App. 1969) ("The rule that only the insurer can raise the question of lack of insurable interest appears to be well supported in other jurisdictions.").

3 Indiana Code Section 27-1-12-17.1 provides:

a) As used in this section, "employee" includes a director, an officer, a partner, a manager, a nonmanagement employee, and a retired employee of the employer or the employer's affiliates.

(b) As used in this section, "employer" means an individual, a corporation, a partnership, a

limited liability company, and any other legal entity that has at least one (1) employee and is legally doing business in Indiana. The term includes an association of employers and the employer's affiliates.

(c) An employer that provides life insurance, health insurance, disability insurance, retirement benefits, or similar benefits to an employee of the employer has an insurable interest in the life of the employee. The trustee of a trust established by an employer for the benefit of the employer has the same insurable interest as the employer in the life of an employee. The trustee of a trust established by an employer that provides life insurance, health insurance, disability insurance, retirement benefits, or similar benefits to an employee of the employer and acts in a fiduciary capacity with respect to that employee or the employee's dependents or beneficiaries has an insurable interest in the life of the employee for whom benefits are to be provided.

(d) An employer or the trustee of a trust established by the employer may acquire insurance upon an employee in whom the employer or the trustee of the trust has an insurable interest as determined under subsection (c) if the employee consents to be insured. An employee consents to be insured if the employee is provided written notice of the insurance coverage and does not object to the insurance coverage within thirty (30) days of receipt of the notice.

(e) An insurable interest must exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(f) Proceeds of a policy issued under this section are exempt from the claims of the employee's creditors or dependents.

4 Indiana Code Section 27-8-1-6 provides:

A policy or certificate issued by any such an association shall be exempt from the valuation based upon the American Experience Table, or any other table of mortality, in consequence of such association conducting its business on the plan of assessing members, and such policy or certificate, when the payments thereon are made by any person other than the insured, and without the written consent of the insured, to be valid must be supported by an insurable interest.

5 Indiana Code Section 27-8-3-8 provides:

No corporation, association or society doing business of life insurance under this chapter shall issue any policy of life insurance in which the beneficiary named has no insurable interest. Any assignment of the policy or certificate to a person having no insurable interest in the insured life, except as security for actual debt, with remainder over to the beneficiary or to the estate of the insured, shall render such a policy or certificate void.

6 Based on our resolution of this issue, we need not determine whether transfer or

cancellation is the proper remedy requested by Bonita.

On remand, Jacobs moved for summary judgment. Bonita also moved for summary judgment and filed a response to Jacobs's motion for summary judgment. Jacobs then filed a response to Bonita's motion for summary judgment and replied to her response. On January 31, 2007, after a hearing, the trial court granted Jacobs's motion for summary judgment and denied Bonita's motion for summary judgment, allowing Jacobs to retain the life insurance policies. Bonita now appeals.

Analysis

Bonita argues that the trial court improperly granted Jacobs's motion for summary judgment. When reviewing the propriety of a ruling on a motion for summary judgment, we apply the same standard as the trial court. See Atlantic Coast Airlines v. Cook, 857 N.E.2d 989, 994 (Ind. 2006). A party seeking summary judgment must show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); Cook, 857 N.E.2d at 994. Our review of a summary judgment motion is limited to the materials designated to the trial court. Cook, 857 N.E.2d at 994. The trial court accepts as true those facts alleged by the nonmoving party, construes the evidence in favor of the nonmoving party, and resolves all doubts against the moving party. Id. at 994-95.

The parties agree that when the policies were issued, Jacobs had an insurable interest in David's life. "[A] person has an insurable interest in the life of another, where there is a reasonable probability

that he will gain by the latter's remaining alive, or lose by his death . . . ." State v. Willett, 171 Ind. 296, 306, 86 N.E. 68, 71 (1908) (quotations and citation omitted); see also Miller v. Travelers' Ins. Co., 81 Ind. App. 618, 622, 144 N.E. 554, 555 (1924) ("It is well settled in this state that an insurable interest does not arise from the mere fact of the kinship shown, but must be a pecuniary one, and be disclosed by the facts alleged."). When AMT was operating successfully, there was a reasonable probability that Jacobs stood to gain from David remaining alive and would suffer a loss by his death. The parties also agree that upon the dissolution of AMT Jacobs's insurable interest in David terminated.

It is well-settled that, "Where, however, a policy is issued to one upon the life of another, the former having no insurable interest in the latter, it is void, being in the nature of a wagering contract, and hence in contravention of public policy." Miller, 81 Ind. App. at 620, 144 N.E. at 555. The question raised by Bonita2 is whether an insurable interest must continue throughout the term of a life insurance policy or whether an insurable interest need only exist at the time the policy is issued.

The parties analogize and distinguish three Indiana statutes that are not directly on point. See Ind. Code §§ 27-1-12-17.13, 27-8-1-6,4 & 27-8-3-8.5 We need not specifically address these statutes, however, because our supreme court has observed:

> As a general rule, the authorities affirm that a policy of life insurance or the appointment or designation of a beneficiary, which is valid in its inception, continues and remains valid, although the insurable interest or relationship

> of the beneficiary has ceased or terminated, unless it is otherwise stipulated or provided in the contract to the contrary.

Farra v. Braman, 171 Ind. 529, 547, 86 N.E. 843, 850 (1909). Although Farra involved a divorce and the rights of the named beneficiary who had been married to the insured, the owner of the policy, we see no reason why this statement of law is not binding on us today.

There is no dispute that Jacobs's life insurance policies were valid at their inception because Jacobs, as David's business partner, had an insurable interest in David's life and because David consented to the issuance of the policies. The insurance policies were procured consistent with the terms of the cross-purchase agreements. We simply cannot agree with Bonita that the termination of the insurable interest in the middle of the term rendered the insurance policies void.

Bonita urges that the life insurance policies should be found invalid "to remove any and all possible incentive to encourage the expiration of that life . . . ." Appellant's Br. p. 21. To the extent that Bonita's concern is valid, pursuant to the "slayer's rule," "a beneficiary forfeits insurance proceeds when he 'intentionally and wrongfully' causes the death of the insured." In re Estate of Foleno ex rel. Thomas v. Estate of Foleno, 772 N.E.2d 490, 495 (Ind. App. Ct. 2002) (citation omitted), trans. denied; see also I.C. § 29-1-2-12.1 (codifying the slayer's rule). Thus, Bonita's public policy concerns for "removing incentives" to harm human life are addressed by the slayer's rule. Appellant's Reply Br. p. 12.

Because these policies were valid at their inception, we find it unnecessary to extend the requirement that an insurable interest continue throughout the terms of the policies. The trial court properly granted Jacobs's motion for summary judgment.6

Conclusion

Because the life insurance policies were valid at their inception, the trial court properly granted Jacobs's motion for summary judgment. We affirm.

Affirmed. KIRSCH, J., and ROBB, J., concur.

APPENDIX F

Kevin S. Smith
Clerk

CLERK
SUPREME COURT, COURT OF
APPEALS, AND TAX COURT
STATE OF INDIANA

Cause Number
28A05-0702-CV-00120
Lower Court Number:
28D01-0303-CC-090

JAMIE KENDALL
301 MASSACHUSETTS AVENUE
INDIANAPOLIS, IN 46204-2167

HILLIARD, BONITA V. JACOBS, TIMOTHY

You are hereby notified that the COURT OF APPEALS has on this day 12/10/07

APPELLANT'S PETITION FOR REHEARING DENIED.

FOR THE COURT, JOHN G. BAKER, CHIEF JUDGE, JUDGES KIRSCH, ROBB AND BARNES CONCUR. MS

Witness, my name and the seal of said Court,
this 10th day of DECEMBER, 2007

Signature On File
Clerk, Supreme Court,
Court of Appeals and Tax Court

APPENDIX G

In the Indiana Supreme Court

Bonita G. HILLIARD, in her capacity as Trustee of The H. David and Bonita G. Hilliard Living Trust, Appellant,	)	Court of Appeals 28A05-0702-CV-120
v.	)	
Timothy E. JACOBS, Appellee.	)	

ORDER

This matter is before the Court on Appellant's petition to transfer jurisdiction following a decision by the Court of Appeals, Hilliard v. Jacobs, 874 N.E.2d 1060 (Ind. Ct. App. 2007).

Appellant has also moved to strike the appearance and brief of the amicus curiae filed in the Court of Appeals, and Appellant has filed a motion for leave to file a reply to the joint response to her motion to strike.

The Court GRANTS Appellant's motion for leave to file a reply to the joint response to her motion to strike and directs the Clerk to show that reply filed as of its date of tender, March 10,2008. However, the Court DENIES the motion to strike.

As to the transfer petition, the Court has reviewed the decision of the Court of Appeals.

Any record on appeal that was submitted has been made available to the Court for review, along with all briefs filed in the Court of Appeals and materials filed in connection with this request to transfer. Each Justice has had the opportunity to voice his views on the case in conference with the other Justices. Three Justices have voted to deny transfer, and two Justices have voted to grant transfer.

Accordingly, the Court DENIES Appellant's petition to transfer.

The Clerk is directed to send a copy of this order to all counsel of record and any party appearing without counsel.

Done at Indianapolis, Indiana, this 29th day of April, 2008.

Signature On File

Randall T. Shepard
Chief Justice of Indiana

Shepard, C.J., Dickson and Boehm, JJ., vote to deny transfer. Sullivan and Rucker, JJ., vote to grant transfer.

APPENDIX H

STATE OF INDIANA	)	IN THE GREENE
	)SS:	CIRCUIT COURT
COUNTY OF GREENE	)	CAUSE NO.: 28C01
		-0303-CC-0090
H. DAVID HILLIARD	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
TIMOTHY E. JACOBS	)	
	)	
Defendant.	)	

AFFIDAVIT

I, H. David Hilliard, being first duly sworn, depose and say that I am the plaintiff herein, and I have personal knowledge of and am competent to testify to the following facts:

1. I am fearful for my family's and my safety and for our lives because Timothy E. Jacobs boasted to me that his wife, Carmen Jacobs, has connections to hit men in New Jersey and that he can have people killed simply by Mrs. Jacobs making a phone call, and also because when we were collecting affidavits in the case of Mr. Jacobs' wrongful actions, I learned of others who Mr. and Mrs. Jacobs had informed of their connections to hit men in New Jersey, and of their threats to have certain individuals killed.

2. My fear is further heightened because Mr. Jacobs is deliberately violating the Cross-Purchase Agreement to be able to receive $2,500,000.00 in the event of my death, and is paying $36,112.20 in annual premiums to procure this significant financial gain to himself.

3. Since I am represented by counsel, R. Brock Jordan, I can be contacted through counsel. For interrogatories and/or depositions, due to my concern and fear, I do not want to provide personal information – such as my date of birth, social security number, home and business addresses and telephone numbers – that can lead to my family or myself being harmed, and, therefore, for such purposes, I have set up the following address (verification attached): David Hilliard, Post Office Box Number 1251, Bloomington, Indiana 47402.

I affirm under the penalties of perjury that the foregoing representations of fact are true.

Signature On File
Affiant

H. David Hilliard
Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

SUBSCRIBED AND SWORN to before me, a Notary Public in and for said County and State, this 16 day of May, 2003.

My Commission Expires: 9-15-07

Signature On File
Notary Public

Tara Glenn-Holbrook
Printed Name

Resident of Monroe County

RUBIN & LEVIN, PC - RBJ/agm

APPENDIX I

STATE SENATOR
ED CHARBONNEAU
200 West Washington Street
Indianapolis, Indiana 46204

FOR IMMEDIATE RELEASE

Charbonneau:

"New law helps prevent profiting from death of insured. Human life should not be wagered on," says State Senator.

(STATEHOUSE) _ Sen. Ed Charbonneau (R-Valparaiso) has taken a leading role to prevent investors from wagering on human life and profiting from the death of the insured.

Legislation Charbonneau helped champion through the Senate aims to protect consumers -- often senior citizens -- from being persuaded to take out life insurance policies for the sole purpose of selling the death benefits.
Gov. Mitch Daniels signed House Enrolled Act 1379 into law today.

Charbonneau said life insurance policies are more and more often being treated as investments and senior citizens are being targeted in a new trend for stranger-originated life insurance policies (STOLIs).

Here is how it works: senior citizens are asked to take out life insurance policies in their own names specifically to sell the death benefits. Seniors receive a reduced, one-time cash payment and the investors

agree to finance the premiums in hopes of profiting from the life insurance policy by being named the beneficiary. When the senior dies, the investor collects the death benefits. Beneficiaries sometimes sell the benefits to someone else.

The sooner the individual passes away, the higher the profit for the investors, Charbonneau said. Senior citizens need to be protected from the practice of stranger-originated life insurance policies, a trend that undermines the purpose of life insurance.

Charbonneau sponsored the new law that will prohibit the promotion of purchasing a life insurance policy in connection with stranger-originated life insurance.

Not only could this law help deter the abuse of life insurance policies, but consumers who are unaware that upfront payments from investors are generally taxable and legal fees accompany the transaction could be protected, Charbonneau said.

Charbonneau hopes this mandate will also protect senior citizens participating in stranger-originated life insurance policies that may use up their life insurance capacity and be unable to purchase life insurance needed for estate planning.

In addition, Charbonneau said participants of stranger-originated life Insurance policies could also face litigation from insurance companies.

Life insurance policies are used to help families cope financially following the death of a loved one and helps businesses deal with the loss of an owner or employee, Charbonneau said. Life insurance is not to

be used by investors of STOLIs who wager on human life and profit from the death of the insured.

Some individuals sell insurance policies to a third party for cash, a trend called viatical settlements. This is a method often used by terminally ill people, Charbonneau said. STOLIs developed from viatical insurance agreements and unlike STOLIs, life insurance companies support viaticals because the policy was in place before the person knew they were ill.

According to Charbonneau, Indiana is the third state to regulate STOLI transactions. Other states like Kentucky and West Virginia followed Indiana's lead. He said the American Council of Life Insurers (ACLI) will work with the Department of Insurance in order to implement the new law.

Sen. Charbonneau represents Senate District 5, which includes Starke County and portions of Porter, LaPorte, Marshall, Jasper, Pulaski, and St. Joseph counties.